

[Assembly Bill 203](#) (Obernolte)

Date: 03/17/15

Program: Fire Prevention Fee

Sponsor: BOE Member Runner

Public Resources Code Sections 4213, 4220, and 4222

Effective: January 1, 2016

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**Summary:** Extends from 30 to 60 days the time by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination.

**Summary of Amendments:** The amendment since the last analysis adds coauthors.

**Purpose:** To provide additional time for fee payers to review their assessments and either timely pay their bill or dispute the fee.

**Fiscal Impact Summary:** Annual revenue loss of \$382,700.

**Existing Law:** Existing law<sup>1</sup> requires the Board of Equalization (BOE) to collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).<sup>2</sup> The fee benefits the California Department of Forestry and Fire Protection (CAL FIRE), which is responsible for fire prevention and suppression in areas that the State Board of Forestry and Fire Protection (Fire Board) has determined are state responsibility areas (SRAs). As required,<sup>3</sup> the Fire Board adopted emergency regulations to establish a fire prevention fee. The fee amount is not permitted to exceed \$150 per habitable structure on a parcel located within an SRA, except as adjusted by the Fire Board. Public Resources Code (PRC) Section 4102 defines an SRA as an area over which the Fire Board determines that the prevention and suppression of fires is primarily the financial responsibility of the state. PRC Section 4125 requires the Fire Board to classify all state lands and determine the areas in which the state has primary financial responsibility for fire prevention and suppression.

Beginning July 1, 2013, the Fire Board may annually adjust the fire prevention fee rate.<sup>4</sup> Any adjustment reflects the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States. The \$152.33 fee for fiscal year (FY) 2014-15 remained the same from FY 2013-14; most bills will amount to \$117.33, as most owners will receive a \$35 reduction in the fee.<sup>5</sup>

**Collection and Administration.** Commencing with FY 2011-12, the BOE annually collects the fire prevention fee. The FCPL governs the BOE's collection function.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

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<sup>1</sup> Public Resources Code (PRC) Section 4213.

<sup>2</sup> Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code (RTC).

<sup>3</sup> PRC Section 4212(a).

<sup>4</sup> PRC Section 4212(b). On January 7, 2014, the Fire Board adjusted the fire prevention fee rate from \$150.00 to \$152.33, as required by statute. The fee amount was not adjusted after that. On January 1, 2015, the fee adjustment was made permissive with the passage of AB 2048 (Ch. 895, Stats. 2014).

[http://www.bof.fire.ca.gov/regulations/approved\\_regulations/2014\\_approved\\_regulations/approved\\_sra\\_fee\\_adjustment\\_reg.pdf](http://www.bof.fire.ca.gov/regulations/approved_regulations/2014_approved_regulations/approved_sra_fee_adjustment_reg.pdf)

<sup>5</sup> If a habitable structure is also within the boundaries of a local agency that provides fire protection services, the property owner will receive a \$35 reduction for each habitable structure. Approximately 98% of habitable structures in an SRA are also covered by a local fire protection agency.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount of each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that fee payers may call if they have questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a fee payer files a petition for redetermination within that period. If a fee payer files a timely petition for redetermination, all legal collection actions are held until CAL FIRE's final determination. In certain cases, CAL FIRE may treat a petition for redetermination filed after the 30-day time period as an administrative protest or a claim for refund. CAL FIRE may treat the untimely petition as an administrative protest or claim for refund if it determines that the facts presented indicate that the fire fee may have been excessive or that the amount or the application of the fee may have been the result of a certain type of error.<sup>6</sup>

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of a fee that CAL FIRE determines is due. CAL FIRE handles all appeals and determines refund eligibility, referring persons entitled to a refund to file a refund claim with the BOE.<sup>7</sup>

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund (Fund) has sufficient funds to finance specified prevention activities. CAL FIRE and the BOE began the FY 2014-15 (Year 4) billings in early March 2015.

An exemption from the fire prevention fee provides relief for the owner of a habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year for which the fee is due. If the habitable structure has not been repaired or rebuilt, then the exemption may apply to one subsequent year.<sup>8</sup>

**Proposed Law:** This bill extends from 30 to 60 days the date the annual fire prevention fee assessment is due and payable. It also provides a corresponding 60-day period to file a petition for redetermination. This bill becomes effective January 1, 2016.

**Background:** On July 7, 2011, Governor Brown signed ABx1 29,<sup>9</sup> which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the fee was delayed due to several factors, including adoption of the emergency regulations and the costs of implementation.

Governor Brown's signing message for ABx1 29 states, in part, "A fee consistent with the 'beneficiary pays principle,' such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues."

Since then numerous bills have been introduced to repeal, replace, or provide a fire fee exemption. Only AB 2048 (Ch. 895, Stats. 2014, Dahle), with numerous changes to the program, has become law. Last year's SB 1413 (Wyland) was identical to this bill.

Other bills introduced during the last three legislative sessions include:

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<sup>6</sup> PRC Section 4220.1.

<sup>7</sup> PRC Section 4213(a)(3)(A) and (B) does not allow BOE to accept claims for refund on the basis that the person is not subject to the fee, or that the fee is improperly calculated. However, the BOE may directly process certain administrative refund claims (e.g. overpayments).

<sup>8</sup> PRC Section 4213.1.

<sup>9</sup> Chapter 8, Stats. 2011.

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Bill No.	Session	Author	Subject
AB 23	2013-14	Donnelly	Proposed repeal of the fire prevention fee.
AB 124	2013-14	Morrell	Proposed repeal of the fire prevention fee.
AB 468	2013-14	Chesbro	Proposed repeal of the fire prevention fee and replaced with a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.
AB 929	2013-14	Jones	Intended to implement reimbursement procedures for persons who have paid a fire prevention fee covering a structure that was previously in an SRA, but that was determined to no longer be.
AB 1519	2013-14	Donnelly	Would have deleted the recurring 20% penalty for final redeterminations.
AB 1954	2013-14	Harkey	Would have provided a 90-day period for a petition for redetermination to become final, and within that 90-days allow a person to appeal to the BOE the denial of a refund.
AB 2048	Ch. 895, Stats. 2014	Dahle	Changes included: (1) made optional the Fire Board's annual rate adjustment; (2) fee relief for a natural disaster; (3) added an "administrative protest" procedure to be administered by CAL FIRE; (4) eliminated the requirement to notify both the BOE and the Fire Board of a petition for redetermination; and (5) replaced the recurring 20% penalty with a one-time 10% penalty, and prohibits the 20% penalty from being imposed or added to the fee that remains unpaid.
SB 17	2013-14	Gaines	Legislative intent to repeal the fire prevention fee.
SB 125	2013-14	Gaines	Proposed exemption from the fire prevention fee for those properties with a habitable structure that lies within both an SRA and the boundaries of a local fire district that provides fire protection service.
SB 147	2013-14	Gaines	Proposed exemption from the fire prevention fee for those property owners with income of less than 200% of the federal poverty level.
SB 832	2013-14	Gaines	Proposed a natural disaster exemption from payment of the fire prevention fee for structures destroyed or damaged.
SB 1413	2013-14	Wyland	Would have extended the date by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination, from 30 to 60 days
ABx1 24	2011-12	Blumenfield	Proposed a fire protection fee to fund fire suppression and prevention and emergency response efforts in SRAs.
ABx1 45	2011-12	Jeffries	Proposed repeal of the fire prevention fee.
AB 1506	2011-12	Jeffries & Cook	Proposed repeal of the fire prevention fee.
SB 1040	2011-12	Evans	Proposed repeal of the fire prevention fee.
AB 2474	2011-12	Chesbro	Proposed a credit of up to \$150 against the fire prevention fee of amounts paid to a local agency for fire protection services.

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## Commentary:

1. **The March 17, 2015, amendment** adds coauthors.
2. **Effect of the bill.** This bill extends the date by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination, from 30 to 60 days. Currently, the BOE administers more than 30 tax and fee programs, none of which provides a 60-day period to pay the tax or fee assessment or billing, or file a petition for redetermination. In general, under existing laws,<sup>10</sup> a petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the taxpayer or fee payer. If a petition for redetermination is not filed within the 30-day period, the determination becomes final and due and payable at the expiration of the 30-day period.
3. **The 60-day period is consistent with California's income tax law.** Current state income tax law<sup>11</sup> provides that a notice of proposed deficiency assessment is final after a 60-day period, unless within 60 days after the mailing of a notice of proposed assessment, a taxpayer files with the Franchise Tax Board (FTB) a written protest against the proposed deficiency assessment, specifying in the protest the grounds upon which it is based. The deficiency assessment is due and payable 15 days from the date of a notice and demand for payment.<sup>12</sup> The FTB's notice of proposed assessment is similar to the fire prevention fee notice of determination.
4. **Related bills.** Senate Bill 250 (Gaines) is identical to this bill. [AB 301](#) (Bigelow) prorates the fire prevention fee for those owners that own the habitable structure for only a portion of the year. [AB 1202](#) (Mayes) generally provides a fire prevention fee reduction of an amount equal to the amount paid to a local fire district for fire prevention services. [SB 198](#) (Morrell) and [SB 520](#) (Berryhill) repeal the fire prevention fee altogether.

**Administrative Costs:** The BOE will incur some minor one-time costs for computer programming and revising information and publications. A cost estimate is pending.

## Revenue Impact:

**Background, Methodology, and Assumptions.** Annual fee assessments are due and payable to the BOE 30 days after assessment. BOE staff reports that during FY 2011-12, FY 2012-13, and FY 2013-14, interest and penalties remitted totaled \$4,617,894. Of that amount, \$1,493,882 was paid between 31 and 60 days from the date of assessment and under this proposal would not have been assessed. The annual average penalties and interest paid is \$497,961. However, BOE staff notes that the payments made after 60 days continues to decline, at an average annual rate of two percent. Meanwhile, timely payments made within the 30-day period have improved, in part due to BOE outreach efforts. Given the continued improvement in timely payments, BOE staff estimates the annual average revenue loss attributable to penalties and interest at \$382,700.

**Summary.** Extending the fire prevention fee due date to 60 days from the date of assessment, would result in an average annual revenue loss of \$382,700.

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<sup>10</sup> RTC Sections 6561 (Sales and Use Tax Law), 7710 (Motor Vehicle Fuel Tax Law), 8851 (Use Fuel Tax Law), 30261 (Cigarette and Tobacco Products Tax Law), 32301 (Alcoholic Beverage Tax Law), 38441 (Timber Yield Tax Law), 40091 (Energy Resources Surcharge Law), 41085 (Emergency Telephone Users Surcharge Law), 43301 (Hazardous Substances Tax Law), 45301 (Integrated Waste Management Fee Law), 46351 (Oil Spill Response, Prevention, and Administration Fees Law), 50114 (Underground Storage Tank Maintenance Fee Law), 55081 (Fee Collection Procedures Law), and 60350 (Diesel Fuel Tax Law).

<sup>11</sup> RTC Sections 19041 and 19042.

<sup>12</sup> RTC Section 19049.

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**Qualifying Remarks.** The data suggests that the penalties and interest paid for the first three billing periods (FY's 2011-12, 2012-13, and 2013-14), has been fairly consistent. However, there may have been circumstances particular to the fire fee program that have led to these amounts. Habitable structure owners live in rural areas, are not familiar with BOE billings, may have fixed-income, and may otherwise require additional time for payment or obtaining assistance. Additionally, BOE billings in the first three billing years have been fairly compact, meaning some billings followed just months after the preceding billing cycle ended. Overall, the fee program is new and unique, the sample size is small, and due to the reasons stated above, program data may not be a good indicator of future revenue impacts.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.